

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

MORCOUS MORGAN, and)	
ERIEN IBRAHIM,)	
Petitioners,)	
)	Civil Action 04-11017-RCL
v.)	
)	
JOHN ASHCROFT, MICHAEL GARCIA,)	
BRUCE CHADBOURNE, and)	
ANDREA CABRAL,)	
Respondents.)	

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF THE MOTION
TO DISMISS FOR LACK OF JURISIDCTION**

In their initial memorandum, dated June 14, 2004, the Respondents' argued, *inter alia*, that the Petitioner's failure to have appealed the decision of the BIA precluded habeas jurisdiction. At that time, the First Circuit had left open the question of whether exhaustion of available remedies was a prerequisite to habeas jurisdiction. Seale v. INS, 323 F.3d 150, 153 (1st Cir. 2003).

Since the date of the Respondents' motion to dismiss (a motion the Petitioners have not opposed), the First Circuit has decided Sayyah v. Farquharson, --- F.3d ---, 2004 WL 1921824 (1st Cir. August 31, 2004). In that case, the First Circuit concluded that a failure to exhaust available remedies precludes habeas jurisdiction. Where a Petitioner seeking habeas review has not exhausted available remedies, "[w]e hold that section 1252(d)(1) applies, jurisdictionally barring consideration of Sayyah's contested claim for want of exhaustion." Sayyah, 2004 WL 1921824, *7.

As the Petitioners failed to effect a timely appeal of their underlying claims to the First Circuit, see First Circuit Docket # 02-2117, habeas jurisdiction in the instant action is statutorily precluded. See Sayyah, supra; and 8 U.S.C. §1252(d)(1).

Wherefore, the Respondents request that the instant action be dismissed for lack of jurisdiction.

Respectfully Submitted,

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